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CHARLES ELMORE CR

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 563

SIKORA REALTY CORPORATION,

Petitioner,

against

TIGHE E. WOODS, Housing Expediter, as Successor to the Price Administrator,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

PETITIONER'S REPLY BRIEF

The plain language of Sec. 1(b) does not justify the narrow interpretation proposed by the respondent. In effect the respondent claims that the phrase "for the purpose of sustaining any proper suit" actually means any *pending* suit. If such was to have been the meaning of the statute the word "pending" would have been used in place of the word "proper". The requirement of the statute is that the right or liability be "incurred, prior to such termination date." It does not provide that the suit must be commenced prior to such date. When a right or liability has been incurred it will sustain a suit until such suit is barred by the pertinent regulation or other limitation. In the instant case the liability of the landlord to accept a reduced rental or become subject to the penal provisions of the statute and the right of the landlord to contest the validity of the order imposing such liability accrued on July 31st

1946, when the order of the Area Rent Director was made. Upon petitioner's challenging this order in the manner provided by the regulations, petitioner's right to do so continued until the issue was finally determined in the manner provided by the Emergency Price Control Act of 1942, and under the provisions of Sec. 1(b) all the pertinent sections of that act continue in existence until the issue is disposed of. For the respondent to urge that petitioner has not alleged any facts which would, if proved, establish the continuing jurisdiction of the Emergency Court of Appeals shows that the respondent is closing his eyes to the plain wording of the statute. It was not necessary as claimed by respondent that the right or liability be the subject of an action for damages or otherwise in progress on June 30th 1947.

Furthermore the respondent places too narrow a meaning on the word "suit". Webster's New International Dictionary defines "suit" as "the attempt to gain an end by legal process." Under modern conditions the pursuit of an administrative proceeding for the purpose of determining a controversy is as much a "suit" as is an action in a more traditional form of tribunal. It is on such a basis that the courts require exhaustion of administrative remedies. When petitioner asked that the order of the Area Rent Director be reviewed and upon such application being denied, filed a protest with the Administrator, petitioner was attempting to gain an end by legal process. Hence even from the point of view of the respondent's argument a suit was pending on the termination date of the statute.

The very act of the Housing Expediter in denying petitioner's protest could only be justified on the continuing applicability of the Emergency Price Control Act. Otherwise the Housing Expediter had no authority to deny or act upon the protest in any manner whatsoever.

The respondent's argument that the Housing and Rent Act of 1947 does not mention the Emergency Court of Ap-

peals and does not vest in that court any jurisdiction whatsoever, is entirely beside the point. Petitioner claims that the jurisdiction of that court arises from a right and liability incurred prior to the termination date and inasmuch as such right and liability was sufficient to sustain a suit before June 30th, 1947, it was necessarily sufficient thereafter. The same comment applies to the quotations from the reports by the Committees of Congress. They contain no suggestion that rights incurred prior to June 30th, 1947, were to be obliterated if no suit based thereon had been commenced by that date.

As to respondents effort to dispose of petitioner's contention that so far as the maximum rental in the instant case is concerned, the Housing and Rent Act of 1947 is unconstitutional unless the Emergency Court of Appeals has jurisdiction to determine the lawful rent payable on June 30th, 1947, it should be noted that the Emergency Court of Appeals itself in a foot note to its opinion in *Talbot* v. *Woods,* 164 F. 2nd 493-495, expressly refers to the question whether Congress has constitutional power to prescribe a maximum rent which has not been the subject of judicial determination.

Indeed, the foot note to the opinion of the Emergency Court of Appeals in the *Talbot* case above mentioned shows how badly needed is a clarification by this court as to the meaning of the Statute.

As pointed out in petitioner's main brief, this clarification is so seriously needed that in *Fleming* v. *Hill,* now before this Court as Docket No. 437, the Circuit Court of Appeals for the 10th Circuit itself certified to this Court several questions arising under the statute.

Dated, Astoria, New York, March 4th, 1948.

Respectfully submitted,

AGNES SIKORA GILLIGAN,
Counsel for Petitioner.